

REMARKS

Claims 2 - 6, 8 - 11, 13 - 23, 25 - 31, and 33 - 41 are currently pending in the instant application. Claims 2 - 6, 8 - 11, and 36 - 41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 13 - 17, 20, 22, 23, 25 - 29, 34, and 35 are rejected under 35 U.S.C. §102(b). Reconsideration and allowance of claims 2 - 6, 8 - 11, 13 - 23, 25 - 31, and 33 - 41 in view of the preceding amendments and the following remarks is respectfully requested.

Rejections Pursuant to 35 U.S.C. §112

Claims 2 - 6, 8 - 11, and 36 - 41 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner states:

There is no support for the limitation “a crossover strap extending from one of the contoured panels to another contoured panel”. Paragraph [21] of the specification and figure 2 recites “the crossover strap 56 extends from one of the panels and in use extends to the other panel by way of passing through opening 62. That is not extending from one of the panels to the other structurally. The applicant would have to amend the claim to read something similar to “extending from one of the contoured panels and adapted to extend to the other” since it doesn’t really (not structurally) extend to the other panel.

Applicant respectfully traverses this rejection. Paragraph 21 clearly states that the “crossover strap 56 is adapted to fit across the top of the patient’s head from a middle portion 56 of one contoured panel to a middle portion 58 of the other contoured panel”. It is respectfully submitted that this statement alone provides the necessary support for the claim limitation “a crossover strap extending from one of the contoured panels to another contoured panel”. However, paragraph 22 further states that the end tab portion 66, which includes a hook and loop fastener (such as VELCRO), is threaded through loop 62 and bent back upon itself so as to adhere the hook portion of the hook and loop fastener to the loop portion of the hook and loop fastener. When the crossover strap is so arranged, the limitation “a crossover strap extending from one of the contoured panels to another contoured panel” is clearly supported.

It should be noted that paragraph 21 describes only one embodiment of the crossover strap 56. Paragraph 22 provides additional support for the claim limitation as currently drafted. Specifically, paragraph 22 states “the present invention contemplates other means of attaching and adjusting the crossover strap as well”.

It is respectfully submitted that one of ordinary skill in the art would understand the description provided in paragraphs 21 and 22 to encompass embodiments in which 1) the first end of the crossover strap is securely attached to a first contoured panel and the second end of the crossover strap is securely attached to the second contour panel, 2) the first end of the crossover strap is securely attached to a first contoured panel and the second end of the crossover strap is releasably attached to the second contour panel, and 3) the first end of the crossover strap is releasably attached to a first contoured panel and the second end of the crossover strap is releasably attached to the second contour panel. Accordingly, it is believed that the specification provides the necessary support for the claim limitation “a crossover strap extending from one of the contoured panels to another contoured panel”.

Claims 2 - 6, 8 - 11, and 36 - 41 are further rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement because the Examiner held:

Claims 2 - 6, 8 - 11, and 36 - 41 recite a “headpiece” but cannot find support in the drawings/specification for them. The applicant recites “headgear comprising a headpiece” so they are two distinct structures.

Applicant respectfully traverses this rejection because the drawings and specification provide the necessary support. Paragraph 20, for example, states that “the contoured panels and joining pieces form a substantially truncated conical or frusto-conical headpiece.” In the embodiment illustrated in FIG. 2, for example, headgear 30 is comprised of the headpiece (i.e., contoured panels 58 and joining pieces 32, 46) and connecting straps (i.e., 36, 38, 68). Accordingly, it is believed that the specification provides the necessary support for the recitation of the term “headpiece”.

For the reasons discussed above, it is believed that claims 2 - 6, 8 - 11, and 36 - 41 comply with the written description requirement of 35 U.S.C. §112, first paragraph. As such, the

rejection of claims 2 - 6, 8 - 11, and 36 - 41 pursuant to 35 U.S.C. §112, first paragraph should be withdrawn.

Rejections Pursuant to 35 U.S.C. §102(b)

Claims 13 - 17, 20, 22, 23, 25 - 29, 34, and 35 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,542,128 to Lomas ("Lomas").

In rejecting claims for want of novelty or for obviousness, the Examiner must cite the best references at his command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified. 37 C.F.R. § 1.104(c)(2).

It is respectfully submitted that the Examiner's general citations to Figures 2 -6 fail to clearly describe those portions of Lomas which allegedly anticipate the claimed invention. For example, it is unclear which particular part or parts of Lomas that the Examiner considers as anticipating a "contoured panel", or a "rear joining piece" or a "front joining piece" as recited, for example, in independent claims 13 and 25. Applicant respectfully requests that the Examiner provide clarification as to which particular part or parts of Lomas forms the basis of his rejection of the claimed invention.

Alternatively, should the Examiner fail to provide additional clarity with respect to the rejection, it is respectfully submitted that Lomas fails to teach a front joining piece, a rear joining piece, and/or contoured panels extending from a rear joining piece to a front joining piece as recited by independent claims 13 and 25. In contrast, Lomas teaches a hood formed by two crescent shaped halves (9, 10) which are sewn together such that the top portions of the crescent shaped halves (9, 10) form an apex (13) and the bottom portions of the crescent shape halves (9, 10) form a wider back piece (16). (Column 2, line 43 to column 3, line 7.) Referring to Figures 5 and 6, it can clearly be seen that the crescent shaped halves (9, 10) are directly joined together at their convex edge (12) and not joined to a front joining piece and/or to a rear joining piece. Because Lomas fails to teach either a front joining piece or a rear joining piece, it follows that

Lomas also fails to teach that crescent shaped halves (9, 10) extend from a rear joining piece to a front joining piece.

For the reasons discussed above, it is believed that claims 13 and 25 are allowable. Thus, it is respectfully requested that the rejection of claims 13 and 25 pursuant to 35 U.S.C. §102(b) in view of Lomas be withdrawn.

Claims 14 - 17, 20, and 22 - 23 depend from allowable claim 13 and claims 26 - 29 and 34 - 35 depend from allowable claim 25. Thus for the same reasons discussed above in conjunction with claims 13 and 25, it is respectfully requested that the rejection of claims 14 - 17, 20, 22 - 23, 26 - 29, and 34 - 35 pursuant to 35 U.S.C. §102(b) in view of Lomas be withdrawn.

The Examiner (on page 1) also stated that claims 18, 19, 21, 30, 31, and 33 were rejected. However, the detailed action portion of the office action fails to provide any basis for their rejection. Clarification is requested. It should be noted that claims 18, 19, and 21 depend from allowable claim 13; whereas claims 30, 31, and 33 depend from allowable claim 25. Thus, it is believed that claims 18, 19, 21, 30, 31, and 33 are also allowable.

It is believed that all outstanding objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to that effect is earnestly solicited. If the Examiner is of the opinion that certain aspects of the application are not in condition for allowance, it is respectfully requested that an Advisory Action be mailed immediately and/or that the Examiner contact the applicant at the number listed below.

Respectfully submitted,

RESPIRONICS, INC.
1010 Murry Ridge Lane
Murrysville, PA 15668-8525

By Richard J. Coldren
Richard J. Coldren
Reg. No.: 44,084
Tel. No.: (724) 387-4455
Fax No.: (724) 387-5021